IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

CRL.A.No. 298 of 2000()

---

CC.57/1997 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

.....

APPELLANT: COMPLAINANT

---

V.K.SREENIVASAN
S/O.V.K.GOPAN
SUB STAFF (ATTENDER)
SYNDICATE BANK, CHEROOTTY ROAD.

BY ADV. SMT.SHERLY CYRIAC

RESPONDENTS: ACCUSED

---

1. THYAGARAJAN ALIAS JAYARAJAN
   PROPRIETOR, GROCERT STORES
   NEAR RAMAKRISHNA MILLS
   SHETTY ROAD, R.R.PURAM
   COIMBATORE.

2. STATE OF KERALA
   REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.R.UDAYABHANU, J**

---

Crl.A.No.298 of 2000

---

Dated this the 9th day of October, 2007

**JUDGMENT**

The appellant is the complainant in C.C.No.57/97 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that the accused/ respondent issued 13 cheques altogether for a sum of Rs.4,47,500/- and that the same when presented got dishonoured for want of funds in the account of the accused.

3. The evidence adduced in the matter consisted of the testimony of PW1 and Exts. P1 to P4. The defence got marked Ext. D1.

4. It is the case of the complainant i.e., PW1, that the accused had represented to him that he is the joint owner of a property at Palakkad and that in order to release the rights of the other co-owners he wanted some money and that the complainant on account of the intimacy with him agreed to the suggestion of the accused to give him signed cheques and on

the strength of the same the accused borrowed amounts from several persons. According to PW1 he had issued 19 such blank cheques. Subsequently, the accused left the place without paying the amounts to the persons from whom the amounts borrowed on the strength of the signed cheques of the complainant. The complainant had paid the amounts due to those persons. Subsequently, he confronted the accused at Coimbatore in December 1991 and then the accused assured him that the amounts will be paid after disposing of the property owned by him and also issued him 13 cheques which are Ext. P1 series. The same when presented got dishonoured for want of funds in the account of the accused. The court below found that the version of PW1 cannot be believed as such. It was also noted that PW1 has stated that a pronote was also executed by the accused. It is mentioned in the judgment that the above pronote for Rs.4,47,500/- has not been produced. The court below has noted that the above pronote is an important document which is sufficient to prove that the accused owed a sum of Rs.4,47,500/- to the complainant. It is pointed out by the counsel for the appellant that the above document was produced in the trial

court. But it could not be located at the time of examination of PW1. At the time of hearing of the present appeal the above document said to be pronote was found in the case records. The appellant has sought for an opportunity to prove the above document and sought for remittal of the case to the court below.

5. Although steps were taken the respondent/accused could not be served and paper publication was effected.

6. In the circumstances, the order of the court below is set aside. The matter is remitted back for a fresh disposal after affording opportunity to the parties to adduce any further evidence if they so desire. The case will stand posted before the court below on 12.11.2007.

The criminal appeal is disposed of accordingly.

**K.R.UDAYABHANU,**
**JUDGE**

csl